

Final Proposed Hawaii Administrative Rules
Title 11 Department of Health
Chapter 148.1 Certification of Adult Foster Homes

September 2019

Prepared by the Developmental Disabilities Division

Section-Specific Changes

Subchapter 1 Definitions

Section 11-148.1-2 provides the definitions and terms used in chapter 11-148.1, Hawaii Administrative Rules (HAR). The definitions are listed in alphabetical order and have been amended from the definitions found in chapter 11-148, HAR, to add new terms and definitions or make them more consistent with statutory definitions.

§ 11-148.1-2 Definitions

The definition of “adult foster home” has been amended to be consistent with section 321-11.2, Hawaii Revised Statutes (HRS).

The definition of “adult with intellectual or developmental disabilities” or “adult with I/DD” replaces the term “foster adult” in chapter 11-148, HAR, and refers to any individual, eighteen years and older, who is not related to the certified caregiver and has been deemed eligible for services by the division.

The definition of “adult placing agency” found in chapter 11-148, HAR, has been deleted as the term is longer referenced in the final proposed rules.

The definition of “adult residential care home” has been amended from the previous definition in chapter 11-148, HAR, to be consistent with section, 321-15.1, HRS.

The definition of “agency” has been deleted as the term is no longer referenced in the final proposed rules.

The definition of “applicant” has been amended to clarify that the applicant must be twenty-one years of age to apply for a certificate of approval.

The definition of “background check” has been added to be consistent with section 321-15.2, HRS and is required for applicants, certified caregivers, and substitute caregivers.

The definition of “boarding house” has been amended to add “private home” and to clarify the relationship between the boarding house recipients and operator’s family.

The definition of “case management branch” has been added.

The definition of “certificate of approval” has been amended to replace “foster parents” with “certified caregiver”, remove “department’s delegated agent”, and replace “foster family home” with “adult foster home.”

The definition of “certified caregiver” has been added to be consistent with section 321-11.2, HRS.

The definition of “certifying agency” has been amended to add “developmental disabilities division, certification unit.” The word “enforce” was added to the phrase “authority to establish and enforce standards of condition.”

The definition of “department” has been amended to remove “State of Hawaii.”

The definition of “developmental disabilities” has been amended to be consistent with section 333F-1, HRS.

The definition of “director” has been added.

The definition of “division” has been added.

The definition of “dual certification” has been added.

The definition of “foster adult” has been deleted and replaced with the term “adult with intellectual or developmental disabilities.”

The definition of “foster parent” has been deleted and replaced with the term “certified caregiver.”

The definition of “household member” has been added.

The definition of “individualized service plan” has been added.

The definition of “intellectual disability” has been added.

The definition of “portable water” has been added.

The definition of “provisional certificate” has been added to distinguish between a temporary certificate and a certificate of approval.

The definition of “related” has been added.

The definition of “residency agreement” has been added to implement new regulations issued by the Centers for Medicare and Medicaid Services for provider owned or controlled settings.

The definition of “residential care facility” has been added.

The definition of “rooming house” has been modified to replace “living quarters for individuals” with “living quarters to paying residents.” “The individuals may share facilities such as a kitchen and bathroom, but there shall be no mutual relationships and responsibilities which characterize family living” has been replaced with “residents may share facilities such as a kitchen and bathroom, but rooming house recipients are not cared for as a family member and typically do not share in the activities and responsibilities of the operator’s facility.”

The definition of “self-preserve” has been added.

The definition of “substitute caregiver” has been added.

Subchapter 2 Certification Requirements

§ 11-148.1-3 Certification Required

Section 11-148.1-3 establishes the need for a certification. The language in this section has been updated to include provisional certificate as a valid certificate to operate an adult foster home. The statement “no person may operate an adult foster home unless certified by the department” has been added to this subsection.

§ 11-148.1-4 Application and Documentation for Certified Caregiver Applicant

Section 11-148.1-4 establishes the application and documentation requirements for the certified caregiver applicant. This section has been amended to provide additional details on the application process and deletes the term “married couple” in reference to who can apply for a certificate of approval.

§ 11-148.1-5 Application and Documentation for Substitute Caregiver Applicant

Section 11-148.1-5 is a new section and establishes the application and documentation requirements for the substitute caregiver applicant. This section will require the substitute caregiver applicant to meet the same application and documentation requirements as the certified caregiver applicant.

§ 11-148.1-6 Home Study Process

Section 11-148.1-6 replaces section 11-148-5, HAR. This section describes the home study process and includes updated language on the procedures.

§ 11-148.1-7 Liability Insurance

Section 11-148.1-7 is a new section and establishes the requirements for liability insurance and automobile liability insurance. This section was added to implement section 321-11.8, HRS on liability insurance and coverage for adult foster homes.

§ 11-148.1-8 Coverage Amounts

Section 11-148.1-8 is a new section and establishes the coverage amounts for liability and automobile insurance.

§ 11-148.1-9 Proof of Insurance

Section 11-148.1-9 is a new section and requires proof of insurance for the home and vehicles used to transport adults with intellectual and developmental disabilities.

§ 11-148.1-10 Issuance of Certificate of Approval

Section 11-148.1-10 replaces section 11-148-6, HAR. This section establishes procedures for the issuance of a certificate of approval and includes when a certificate of approval shall be revoked. The section has been amended to no longer require the certificate of approval to specify: “the specific adult-placing agency” and “the foster developmentally disabled adult if the home has been approved for a specific developmentally disabled adult.”

§ 11-148.1-11 Renewal of Certificate of Approval

Section 11-148.1-11 replaces section 11-148-7, HAR. This section establishes new procedures for the renewal of a certificate of approval.

§ 11-148.1-12 Provisional of Certificate of Approval

Section 11-148.1-12 is a new section and establishes procedures for the issuance of a provisional certificate.

§ 11-148.1-13 Denial of Application for or Renewal of Certificate of Approval

Section 11-148.1-13 replaces section 11-148-8, HAR and establishes procedures for the denial of an application or renewal of a certificate of approval. This section has been amended to include reasons for the denial and incorporates the right to appeal.

§ 11-148.1-14 Denial of a Substitute Caregiver Application

Section 11-148.1-14 is a new section and establishes procedures for the denial of a substitute caregiver application and incorporates the right to appeal.

§ 11-148.1-15 Remedies

Section 11-148.1-15 is a new section and describes the available remedies when a written notification of violation and order has been issued.

§ 11-148.1-16 Revocation of Certificate of Approval

Section 11-148.1-16 replaces section 11-148-9, HAR and establishes procedures for the revocation of a certificate of approval. This section has been amended to specify when a certificate of approval may be revoked.

§ 11-148.1-17 Hearing

Section 11-148.1-17 replaces section 11-148-11, HAR and establishes the hearing procedures on a contested case.

Subchapter 3 Administration of the Adult Foster Home

§ 11-148.1-21 Eligibility of Individuals to be Cared for

Section 11-148.1-18 replaces section 11-148-13, HAR and establishes the criteria for individuals who are admitted into the adult foster home. The section has been amended to define who is eligible. The statement, "The developmentally disabled foster adult may be in need of a lesser restrictive environment than that adult is currently in" is deleted.

§ 11-148.1-22 Admission

Section 11-148.1-22 is a new section and establishes the admission process for when an adult with I/DD has been admitted to an adult foster home.

§ 11-148.1-23 Number of Individuals to be Cared for

Section 11-148.1-23 replaces section 11-148-13, HAR and establishes the number of adults with I/DD that can be cared for in an adult foster home as defined in section 321-11.2, HRS.

§ 11-148.1-24 Record of Adult with I/DD

Section 11-148.1-24 replaces section 11-148-16, HAR, which has been divided into two sections: section 11-148.1-24 and section 11-148.1-25. Section 11-148.1-24 lists the type of information that shall be kept in the record of the adult with I/DD. A residency agreement is now required per the final rule for Home and Community Based Services regulations for Provider Owned or Controlled Settings.

§ 11-148.1-25 Adult Foster Home Record

Section 11-148.1-25 requires the maintenance of an adult foster home record. This section includes a list of required reports that shall be maintained in the adult foster home record. Certified caregivers and substitute caregivers, if applicable must be trained in first aid and cardiopulmonary resuscitation and their certificates must be maintained in the adult foster home record.

§ 11-148.1-26 Contacts with the Foster Home

Section 11-148.1-26 replaces section 11-148-17, HAR and specifies when contacts with the foster home shall be conducted.

§ 11-148.1-27 Surrender of Certificate

Section 11-148.1-27 is a new section and establishes procedures when a certified caregiver voluntarily surrenders the certificate of approval to the certifying agency.

§ 11-148.1-28 Change in Information

Section 11-148.1-28 is a new section and requires the certified caregiver to notify the certifying agency of any change in contact information, changes that may affect the caregiver's qualifications, or changes to the household that may affect the adult with I/DD.

Subchapter 4 Care of Adult with I/DD

§ 11-148.1-32 Member of Foster Family

Section 11-148.1-32 replaces section 11-148-20 and ensures that the adult with I/DD is treated as part of the foster family. The certified caregiver is required to facilitate individual choice regarding services and supports, and outlines who must provide them per the final rule for Home and Community Based Services regulations for Provider Owned or Controlled Settings

§ 11-148.1-33 Health

Section 11-148.1-33 replaces section 11-148-21, HAR. This section defines the responsibilities of the certified caregiver regarding the health of the adult with I/DD.

§ 11-148.1-34 Emergencies and Adverse Events

Section 11-148.1-34 replaces section 11-148-22, HAR. This section describes the procedures for reporting emergencies and other adverse events to the adult with I/DD's family or legal guardian, and case management branch.

§ 11-148.1-35 Diet

Section 11-148.1-35 replaces section 11-148-23, HAR. This section makes the certified caregiver responsible for meeting the dietary needs of the adult with I/DD. This section requires the adult with I/DD to have access to food at any time per the final rule for Home and Community Based Services regulations for Provider Owned or Controlled Settings. Any modification to this requirement must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan.

§ 11-148.1-36 Clothing and Personal Supplies

Section 11-148.1-36 replaces section 11-148-24, HAR. This section addresses the maintenance of clothing and provision of personal care supplies required by the certified caregiver.

§ 11-148.1-37 Recreation and Social Activities

Section 11-148.1-37 replaces section 11-148-25, HAR. This section requires the certified caregiver to provide recreational and social activities for the adult with I/DD. In accordance with the Home and Community Based Services final rule for Provider Owned or Controlled Settings, the section requires the certified caregiver to: (1) allow and provide access for the adult with I/DD to participate in appropriate and integrated social and recreational activities in the community; (2) allow and provide access for the adult with I/DD to have visits with relatives and friends at any time; and (3) ensure the adult with I/DD has the freedom and support to control the adult with I/DD's schedule and activities. Any modification to these requirements must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan.

§ 11-148.1-38 Training and Behavior Supports

Section 11-148.1-38 replaces section 11-148-26, HAR. This section addresses how training and behavior supports shall be carried out.

§ 11-148.1-39 Religion

Section 11-148.1-39 replaces section 11-148-27, HAR. This section has been modified with housekeeping changes.

§ 11-148.1-40 Accounts of the Adult with I/DD

Section 11-148.1-40 replaces section 11-148-28, HAR. This section requires the certified caregiver to keep an accurate accounting record of the adult with I/DD's money and disbursements and a current inventory of the adult with I/DD's possessions. This section no longer requires a written agreement between parties for all single transactions with a value in excess of \$100.

§ 11-148.1-41 Rights of the Adult with I/DD

Section 11-148.1-41 replaces section 11-148-29, HAR. This section outlines the rights of each adult with I/DD. Additional rights have been added to comply with the final rule for Home and Community Based Services regulations. The section adds language which indicates that the adult with I/DD: (1) has the right to privacy, dignity, and respect, and freedom from coercion and restraint; (2) has the freedom and support to control their own schedule and activities; (3) has the right to select a setting that is integrated in and supports full access to the community, including opportunities to seek employment and work in integrated settings, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving Medicaid home and community based services; (4) has the right to select their

residential setting from among setting options, including non-disability specific settings and a private unit in a residential setting; and (5) be encouraged to optimize, but not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact.

§ 11-148.1-42 Discharge of the Adult with I/DD

Section 11-148.1-42 replaces section 11-148-30, HAR. This section describes the conditions, procedures, and timelines for when an adult with I/DD may be discharged from the adult foster home. The new rules require written notice, at least 45 calendar days or sooner by mutual agreement prior to any scheduled discharge, except in an emergency.

Subchapter 5 Foster Family and Home Environment

§ 11-148.1-46 Background Checks

Section 11-148.1-46 replaces section 11-148-34, HAR. This section requires the department to conduct background checks for each applicant, each certified caregiver, all substitute caregivers, all adult household members, and any direct patient access employee. This section also describes the type of offenses that may disqualify an applicant, certified caregiver, or substitute caregiver, and prohibit the person subject to a background check from entering the adult foster home, and from having any responsibility for caring for adults with I/DD.

§ 11-148.1-47 Training

Section 11-148.1-47 is a new section. This section requires applicants, certified caregivers, and substitute caregivers to have current certification in first aid and cardiopulmonary resuscitation. This section also requires certified and substitute caregivers to successfully complete a department approved training program for persons with I/DD.

§ 11-148.1-48 References

Section 11-148.1-48 replaces section 11-148-36, HAR. This section requires all applicants to provide three personal references and has been amended to specify who can be a reference for an applicant.

§ 11-148.1-49 Health of Foster Family

Section 11-148.1-49 replaces section 11-148.37, HAR. This section requires the certified caregiver, all household members, and substitute caregivers to provide written clearance of being free of communicable disease and other physical and emotional conditions that may adversely affect the care of the adult with I/DD.

§ 11-148.1-50 Income

Section 11-148.1-50 replaces section 11-148-38, HAR. This section prohibits the certified caregiver from operating a boarding house, rooming house, or residential care facility on the premise. Business conducted from the home must be in accordance with applicable federal, state, and county law and regulations and no face-to-face business transactions may be conducted on the premise. Reference to the foster family's income has been deleted.

§ 11-148.1-51 Employment

Section 11-148.1-51 replaces section 11-148-39, HAR. This section addresses the certified caregiver's employment outside of the adult foster home and requires that a proposed work schedule be submitted to the certifying agency to ensure that the work schedule does not conflict with the foster care responsibilities.

§ 11-148.1-52 Absences from the Home

Section 11-148.1-52 replaces section 11-148.40, HAR. This section outlines the certified caregiver's responsibilities and procedures to follow when the certified caregiver is absent from the home to ensure the adult with I/DD is not left unattended or unsupervised at any time.